IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. No. 15599 of 2006 (O&M)

DATE OF DECISION: 2.7.2007

Smt. Anita

…Petitioner

Versus

State of Punjab and others

…Respondents

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

**HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. Sumeet Mahajan, Senior Advocate, with
Mr. Sham Lal Bhalla, Advocate,
Mr. A.K. Walia, Advocate,
Mr. Gurminder Singh, Advocate,
for the petitioner(s).

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for respondent Nos. 1 to 3.

Mr. Ashwani Kumar Chopra, Senior Advocate, with
Mr. N.D. Kalra, Advocate,
for respondent Nos. 4 & 6.

**JUDGMENT**

**M.M. KUMAR, J.**

This judgment shall dispose of C.W.P. Nos. 15599, 2344 and 9791 of 2006 as common question of law and facts are involved. However, facts are being taken from C.W.P. No. 15599 of 2006.

The petitioners have approached this Court by filing aforementioned petitions under Article 226 of the Constitution with a prayer for quashing orders passed by the District Education Officer

(Secondary Education), Nawanshahr, in their respective cases thereby refusing to grant approval to their appointments against grant-in-aid posts of JBT/ETT teachers. A direction has also been sought to respondent Nos. 1, 2 and 3 to grant approval to them and allow them to continue as JBT/ETT teachers. A further direction has been sought for releasing of their full pay for the period they have worked from the date of their joining till the date of release of their salary as per the scale admissible to the grant-in-aid JBT/ETT teachers.

Facts are not in dispute. At the instance of Doaba Arya Senior Secondary School, Nawanshahr (for brevity, 'the respondent School') advertisements were published in two English dailies – 'The Indian Express' and 'The Tribune' and twice in the Hindi Daily 'Punjab Kesri' on 25.5.2002 and 27.5.2002 inviting applications for six vacant JBT/ETT posts. The petitioners being eligible and qualified with B.A., B.Ed. and M.A. in respective subjects, applied for the post. They were called for interview on 28.6.2002. The Selection Sub-Committee comprising of five members, constituted in accordance with Rule 7(1) of the Punjab Privately-Managed Recognised Schools Employees (Security of Service) Rules, 1981 (for brevity, 'the 1981 Rules'), interviewed the petitioner on 28.6.2002. Against all the posts of JBT/ETT the petitioners including other candidates appeared before the Selection Sub-Committee for interview which continued for two days on 27.6.2002 and 28.6.2002. The Selection Sub-Committee recommended the names of the petitioners for the posts of JBT in the scale of Rs. 4550-7220. The recommendation of the Selection Sub-Committee was later on

confirmed by the Managing Committee of the respondent School in its meeting held on 28.6.2002. Accordingly, the selection and appointment of the JBT teachers including that of all the petitioners attained finality and they were issued appointment letters. According to the terms and conditions of the appointment letters they were appointed against an advertised post of JBT teachers and their service conditions were to be governed by the 1981 Rules. They were to be paid salary in accordance with the pay scale of the Government teachers, subject to grant of approval to their appointment by the D.P.I. (S). The petitioners were asked to execute an agreement with the school authorities that they would not make a higher claim to salary except the one admissible to JBT teacher merely because they possessed higher qualifications. All of them had duly executed the agreement and then joined their duties (P-6 & P-6/A). They continued to work with sincerity.

The case of the petitioners for the purposes of grant of approval and releasing of 95% of grant-in-aid against the posts held by them was sent to the District Education Officer in July 2002 itself but it was kept pending. Since a considerable time had lapsed without granting approval, the petitioner and other teachers (including petitioners in C.W.P. Nos. 2344 and 9791 of 2006) approached this Court by filing C.W.P. No. 6789 of 2004 for directing the respondents to grant approval to their appointment and other teachers against the aided posts of JBT teachers against which they were appointed in the respondent School. The aforementioned writ petition was disposed of by a Division Bench of this Court vide

order dated 27.4.2004 (P-8). It was directed by the Division Bench that the justice demand notice served by the petitioners be decided by the competent authority within two months from the date of receipt of the certified copy of the order, by passing a speaking order. It was further directed that the petitioners be granted opportunity of being heard as provided under the provisions of law and the order so passed be communicated to them accordingly. It was further ordered that if any relief is found grantable to the petitioners, the same was to be passed on to them accordingly within one month thereafter.

The District Education Officer-respondent No. 3 eventually vide order dated 4.4.2006, declined to grant approval to the appointment of the petitioner as JBT teacher for the purposes of releasing 95% grant-in-aid against the aided post (P-13). Respondent No. 3 in his order dated 4.4.2006 (P-13) has put forward numerous pleas to decline approval to the case of the petitioner. After recording that the appointment to an aided post for the purposes of granting 95% grant-in-aid has to be examined under the 1981 Rules, it has been stated that the advertisements were not in accordance with Rule 7(1) of the 1981 Rules and it violated the instructions dated 20.12.1995 (R-2) and 15.10.1997 (R-3). It has also been pointed out that the advertisement was required to be detailed one and should have been in two parts. In the first part it should have been mentioned that the candidates having JBT/ETT or equivalent qualifications were to be considered for appointment. If such candidates were not to be available then in second part it was required to be stated that only then Graduate/Post Graduate with B.Ed. were to

be considered for the post and they were to be given JBT pay scale. The advertisement did not answer the aforementioned description and, therefore, it violated the tenor of Rule 7(1) of the 1981 Rules and the instructions dated 20.12.1995 and 15.10.1997 (R-2 & R-3). The order further discloses that the respondent School through its Managing Committee had committed gross irregularities in the selection process to various appointments made against the above said advertisements and, therefore, the appointments were not to be approved. However, nothing has been substantiated as to what irregularities or illegalities have been committed in the selection process. Then a reference has been made to a letter dated 17.1.2003, which is alleged to have pointed out the details of irregularities but the same has not been brought on record.

At this stage it is apposite to mention that one Sangha Gurbaksh Kaur had filed C.W.P. No. 13979 of 2002 in this Court, wherein the advertisement, selection process and appointment of Smt. Meenakshi Sidana, who was selected and appointed as JBT (Science) as a result of same selection in the respondent School, was challenged. That writ petition was dismissed on 16.2.2004 (P-19) by a Division Bench of this Court. Even the Special Leave Petition against the order dated 16.2.2004 (P-19), passed by the Division Bench has been dismissed by Hon'ble the Supreme Court on 28.11.2005 (P-20). The order of the Division Bench challenging the selection and appointment of Smt. Meenakshi Sidana, who was respondent No. 4 therein (C.W.P. No. 13979 of 2002) deserves to be extracted *in extenso* and the same reads as under:-

" Several pleas have been raised by the Petitioner in this writ petition. It has been first contended that the Petitioner, who was a post graduate, was more meritorious than respondent No. 4, who was a mere graduate. We find absolutely no merit in this plea as the Petitioner was a graduate and post graduate in Commerce, whereas respondent No. 4 was a Science Teacher having qualifications of B.Sc. and B.Ed. and as such there could be no comparison between the two. It has also been contended with some vehemence that respondent No. 4 was closely related to Shri Desh Bandhu Bhalla, a member of the Selection Committee and the selection was vitiated on account of bias as well. We find from the record that the relationship inter se respondent No. 4 and Shri Desh Bandhu Bhalla has been admitted, but it has been stated in the written statements filed by both respondent No. 3 and respondent No. 4 that he had disassociated himself at the time when the Petitioner's case had come up for consideration. Moreover, we find that Besh Bandhu Bhalla aforesaid has not even been impleaded as a party to the writ petition and for this reason as well, no argument can be raised by the Petitioner on this score. The Petitioner has also contended that as per the document, Annexure P-21 dated 27.12.2002, it was clear that the Director, Education Department had not granted approval for the

selection. We find that this document had come into being during the pendency of the writ petition and makes interesting reading. We reproduce the contents thereof herein:-

> "The appointments which have been made by violating the Government Instructions/Rules, those may not be given any approval, if approval has already been given, then the same be cancelled/rejected."

We observe the language to be somewhat extra-ordinary which does support the plea of the school-Management that there was something untoward in the stand taken by the official respondents. In paragraph 2 of the reply filed by Shri Krishan Chander Kapoor, District Education Officer it finds mention that approval for the selection had been refused because of irregularities in the conduct of the interview, but no details of the irregularities have been spelt out. We accordingly find no merit in the writ petition.

Dismissed."

Subsequently approval in the case of Smt. Meenakshi Sidana was also declined by the District Education Officer on similar grounds as has been done in the instant petitions. Smt. Meenakshi Sidana has also filed C.W.P. No. 16235 of 2006 challenging the order of the District Education Officer, wherein it has been alleged that approval was not granted on extraneous consideration as noticed in

the separate judgment delivered today in her case. It is also pertinent to mention that in C.W.P. No. 13979 of 2002, a letter dated 27.12.2002, which was purported to be written by the Director, Education Department (S) to the District Education Officer, was heavily relied upon wherein it was stated that those appointments, which have been made in violation of Government rules/instructions, were not to be approved and if already approved, the same were to be cancelled. The aforementioned letter has been adversely commented upon by the Division Bench in its order dated 16.2.2004 (P-19), passed in C.W.P. No. 13979 of 2002, which was dismissed. Once no illegality has been found by this Court in that case then there is no room to entertain any doubt with reference to the selection and appointment of the petitioners in these petitions as well because in that petition selection process as a whole was under challenge without any particular reference to the case of Smt. Meenakshi Sidana. There was no impediment for granting approval to the case of Smt. Meenakshi Sidana and others like the petitioners for the purposes of grant-in-aid to the extent of 95%.

In the written statement filed on behalf of respondent Nos. 1 to 3, the stand which has already been noticed in the preceding paras has been repeated. The instructions dated 20.12.1995 (R-2) and 15.10.1997 (R-3) have been placed on record.

Mr. Sumeet Mahajan, Mr. A.K. Walia and Mr. Gurminder Singh, learned counsels for the petitioners have vehemently argued that once the selection process has been upheld by this Court and all the pleas have been taken by respondent Nos. 1 to 3 in their effort to support Sangha Gurbax Kaur (petitioner in C.W.P.

No. 13979 of 2002) then no room is left for them to refuse approval to the case of the petitioners for the purposes of releasing grant-in-aid to the extent of 95%. Learned counsels have maintained that even the Special Leave Petition against the Division Bench judgment of this Court, dated 16.2.2004 (P-19), was dismissed by Hon'ble the Supreme Court on 28.11.2005 (P-20). They have further submitted that even in the impugned orders passed by the District Education Officer-respondent No. 3, no substantial ground for refusing to accord approval is forthcoming and all the grounds are absolutely vague. Learned counsels have submitted that had there been any irregularity and illegality then that could have been brought before this Court when the matter was pending in C.W.P. No. 13979 of 2002. In respect of letter dated 17.1.2003, to which a reference has been made in the impugned orders passed by the District Education Officer-respondent No. 3, learned counsels have submitted that such a letter would not survive for consideration because had there been any such letter in existence then it would have been brought on record during course of proceedings in this Court or before Hon'ble the Supreme Court. Learned counsels have also pointed out that the tenor of this letter is more like the letter dated 27.12.2002, which was annexed as Annexure P-21 in C.W.P. No. 13979 of 2002 and has been severally condemned by the Division Bench.

Mr. Amol Rattan Singh, learned State counsel has vehemently argued that there is patent violation of Rule 7(1) of the 1981 Rules read with the instructions dated 20.12.1995 and 15.10.1997 (R-2 & R-3). According to the learned counsel, the

aforementioned instructions categorically required the Managing Committee of the respondent School to advertise the post/vacancy of JBT teachers by splitting the advertisement in two parts. In the Ist part the candidates who have the qualification of JBT/ETT or equivalent were required to be considered and in the IInd part only in case where the JBT/ETT pass candidates were not available then appointments were required to be made from amongst those who had the qualification of Post Graduation along with B.Ed. It has been highlighted that the instructions further made it clear that merely because the candidates with Graduation or Post Graduation qualifications along with B.Ed. were to be appointed would not be sufficient for them to claim higher pay scale of B.Ed. teachers. Disputing the claim made by the petitioners that the advertisement did not suffer from any irregularity, learned State counsel has pointed out that the advertisement has merely mentioned that experienced teachers against six vacant JBT/ETT aided posts were required preferably one M.A. English, one M.Sc. Chemistry, one M.Sc. Biology, one M.Com, one M.Sc. Maths and one M.A. Economics. Learned State counsel has maintained that the advertisement does not answer the requirements of instructions dated 20.12.1995 and 15.10.1997 (R-2 and R-3). However, the learned State counsel has not been able to say anything with regard to the Division Bench judgment of this Court wherein the selection and appointment of the petitioner on the post of JBT/ETT teacher was un-successfully challenged and even the Special Leave Petition against the judgment of the Division Bench was dismissed by Hon'ble the Supreme Court.

After hearing learned counsel for the parties and perusing the lengthy pleadings, we are of the considered view that these petitions deserve to succeed. Firstly, the issue of selection and appointment of the petitioners cannot again be reopened once a Division Bench of this Court in C.W.P. No. 13979 of 2002, vide order dated 16.2.2004 (P-19) has upheld the same. Even the Special Leave Petition against the aforementioned order has been dismissed on 28.11.200 5 (P-20). It is worthwhile to point out that the Division Bench had noticed a letter dated 27.12.2002 issued by the Director, Education Department, showing that the approval to the selection of the petitioners was not granted. The Division Bench had found that the document came into existence during the pendency of the writ petition and the language was somewhat extra ordinary. The Division Bench leaned to support the plea of the School Management that there was something untoward to the stand taken by the official respondents. It was further noticed from para 2 of the reply filed by the then District Education Officer (Shri Krishan Chander Kapoor) that approval to the selection of the petitioners had been refused because of irregularities in the conduct of interviews without furnishing any details of those irregularities. Once the matter has been dealt with by this Court to such an extent, it does not lie in the mouth of respondent Nos. 1 to 3 to decline approval to the case of the petitioners.

We are further of the view that there is no violation of Rule 7(1) of the 1981 Rules, which reads as under:-

"7. Appointing authority and method of appointment.-

(1) All appointments to the aided posts shall be made by the managing committee in the following manner:-

(i) Appointing authority shall advertise in both English and vernacular daily newspapers in the State, vacancy or vacancies to be filled in by giving full particulars thereof including the requisite qualifications, number of vacancies to be filled in and the last date by which the applications may be submitted;

(ii) the recommendations for appointment of the candidates shall be made by a sub-committee consisting of five members of the managing committee.

(2) The members of the sub-committee shall be appointed by the managing committee."

A perusal of the Rule 7(1) of the 1981 Rules shows that the Managing Committee, being the appointing authority is to advertise an aided post in the daily newspapers in the State both in English and Vernacular by giving full particulars including the requisite qualifications, number of vacancies to be filled and the last date by which the applications were to be submitted. It is further required by the aforementioned Rule that recommendation for appointment of the candidate is to be made by a Sub-committee consisting of five members of the Managing Committee, which is to

be appointed by the Managing Committee. A close scrutiny of the facts of the present case shows that the advertisement had been issued both in the English dailies – 'The Indian Express' and 'The Tribune' as well as in the Hindi daily – 'Punjab Kesri' on 25.5.2002 and 27.5.2002. Thereafter the interviews were conducted by a Sub-committee of five members of the Managing Committee, who were appointed by the Managing Committee. It may be true that there is variation in the advertisement in so far as it is not in two parts as per the instructions dated 20.12.1995 and 15.10.1997 (R-2 & R-3). But then the variation in the advertisement was earlier subject matter of dispute in C.W.P. No. 13979 of 2002. That decision has already attained finality and cannot be reopened. Even otherwise we find that this variation in the advertisement is not of such a magnitude that would warrant the view that the whole selection process has been vitiated. Therefore, the impugned orders passed by the District Education Officer-respondent No. 3 are liable to be set aside and directions are deserve to be issued to the respondents.

For the reasons aforementioned these petitions succeeds. The impugned orders passed by the District Education Officer-respondent No. 3 in respect of the petitioners in these petitions are hereby quashed. A direction is issued to respondent Nos. 2 and 3 to accord approval to the appointment of the petitioners for the purposes of 95% grant-in-aid and also to release the grant-in-aid to the respondent School within a period of two months from the date of receipt of a certified copy of this order. We also issue direction to the respondent School that on receipt of grant-in-aid from respondent

Nos. 1 to 3, it shall release the same to petitioners their whole salary from the date they have joined till date of payment by settling the accounts without. The petitioners shall also be entitled to their costs, which we determine at Rs. 10,000/- in each petition. The costs shall also be paid within a period of two months.

The writ petitions stand disposed of in the above terms.

**(M.M. KUMAR)**
**JUDGE**

**(RAJESH BINDAL)**
**JUDGE**

**2.7.2007**
Pkapoor